

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015050766

DECISION

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on May 14, 2015, naming the Val Verde Unified School District.

Administrative Law Judge Paul H. Kamoroff heard this matter in Perris, California, on September 1 and 2, 2015.

Andrea Smith, Maronel Barajas, and Anna Rivera, Attorneys at Law, appeared on behalf of Student. Student's father attended each day of the hearing. Student and his mother attended the first day of the hearing. OAH provided a Spanish interpreter for Father for each day of the hearing.

Constance M. Taylor, Attorney at Law, appeared on behalf of District. Troy Knudsvig, District's Director of Special Education, and Jeff Janis, District's Coordinator of Special Education, attended each day of the hearing.

The record closed on September 28, 2015, upon receipt of written closing briefs from the parties.

ISSUE

Whether District's failure to reassess Student, pursuant to his parents' March 30, 2015 request for reassessment, denied him a free appropriate public education?

SUMMARY OF DECISION

Student contends that he was denied a FAPE when District refused his parents' request for reassessment. District avers that it was not required to reassess Student on several grounds.

Student's request for reassessment would have required District to reassess Student, and to convene an individualized education program team meeting to review the reassessment, after he had graduated from high school. District's obligations to Student ended upon his receipt of a regular high school diploma. The Decision therefore finds that District's failure to reassess Student did not constitute a denial of FAPE.

FACTUAL FINDINGS

THE STUDENT

1. Student was a 19 year-old young man who resided with his parents within District's boundaries during the applicable time frame. He was eligible for special education under the eligibility category other health impairment due to an attention deficit hyperactivity disorder. Student had also been identified with specific learning disabilities in reading comprehension and math. At the time of the hearing, Student had graduated from Rancho Verde High School, a District school, and had enrolled to attend a community college. Student authorized his parents to act on his behalf for all matters pertaining to his educational program.

2. Attention deficit hyperactivity disorder is a neurodevelopmental disorder characterized by difficulties with executive functions that cause attention deficits,

hyperactivity, or impulsiveness. As a result of his disability, Student had difficulty with attention, concentration, and understanding directions. He had problems focusing while in class, relationships with peers, and maintaining employment. Concurrent with his attention disorder, Student had auditory and visual processing deficits which resulted in delays in reading, writing, and math.

3. Student also demonstrated emotional difficulty. He was ashamed to ask for help, hid his misunderstanding of basic academic concepts from his peers and teachers, and was easily frustrated. For several years, he had been prescribed antidepressant medication.

4. Since 2002, District had provided Student an individualized education program which consisted of general education, specialized academic instruction, classroom accommodations, and additional time to complete tasks.

THE FIRST CASE

5. Student was last assessed by District on October 15, 2013. Student was 17 years old and in the 11th grade. The results of the assessment were reviewed during an IEP team meeting held on the same day. Student's parents did not agree with the assessment results or the recommendations of the District IEP team. As a result, a dispute arose between Student and District regarding his educational program.

6. On November 19, 2013, Student's parents, through previous counsel, filed a request for due process against District, OAH case number 2013110700 (the First Case). The complaint alleged that District denied Student a FAPE for the 2011-2012, and 2012-2013 school years, and extended school years, by: (1) depriving him of appropriate goals; (2) denying him appropriate related services, and; (3) failing to provide an appropriate placement.

THE SETTLEMENT AGREEMENT

7. On November 26, 2013, Student's parents entered into a settlement agreement with District to fully resolve the First Case. As a result of the settlement agreement, in addition to Student's then current annual IEP, Student obtained the following: (1) 90 hours of private tutoring from Sylvan, a private educational agency; (2) reimbursement for roundtrip transportation to Sylvan; (3) District provided roundtrip transportation to school and home; (4) additional accommodations in class; (5) assistive technology, including a tablet computer; (6) weekly counseling services, and; (7) attorney's fees.

8. District received the following as part of the settlement agreement: (1) dismissal with prejudice of the First Case, and; (2) a waiver of claims. Paragraphs 10 and 11 of the settlement agreement described the scope of the waiver. In significant part, paragraph 10 provided:

Parents...agree that this Agreement shall be deemed a full and complete settlement, release and waiver of any and all *existing legal claims* asserted in the due process complaint...through and including June 30, 2015. (Emphasis added.)

9. Paragraph 11 included a waiver for the application of Section 1542 of the California Civil Code, a state statute which normally prevents the waiver of unknown claims.¹ In significant part, paragraph 11 provided:

¹ Paragraph two, an introductory paragraph in the settlement agreement, stated that the parties agreed to resolve all legal issues through June 30, 2015. Any ambiguity regarding paragraph two and paragraphs 10 and 11 are resolved in favor of paragraphs

Parents...agree that this Agreement shall be deemed a full and complete settlement, release and waiver of any and all *existing legal claims asserted and unasserted* by Parents, Student, and each of them, against District...through and including June 30, 2015. (Emphasis added.)

10. Based upon the plain language of paragraphs 10 and 11 of the settlement agreement, Student waived any claims, asserted or unasserted, which existed at the time the settlement agreement was executed, November 26, 2013. In accord with the waiver terms, Student could not bring any additional claims against District that may have existed at that time, until June 30, 2015; at which time those claims would be subject to the applicable two year statute of limitations. Student, however, only waived claims that existed as of November 26, 2013.

11. Student's parents and District each had the opportunity to have an attorney review the terms of the agreement. Neither side was forced or coerced to sign the agreement, nor did either party sign the agreement under duress. Each side was knowledgeable and understood the terms and scope of the agreement. Student and District each received lawful consideration pursuant to the agreement. Student's mother, father, and attorney signed the agreement. Jeff Janis, who was an experienced school administrator and District's special education coordinator, signed the agreement on behalf of District.

12. Pursuant to the settlement agreement Student, through counsel, withdrew the First Case on December 13, 2013.

10 and 11, because those paragraphs were written specific to the waiver terms. Additionally, concerning the issue at hand, paragraph 11, which included the Section 1542 waiver, would control the interpretation of a waiver for an unknown claim.

13. On November 18, 2014, due to scheduling problems with Sylvan, District and Student's parents signed an addendum to the settlement agreement which permitted Student to receive the tutoring services from a private agency other than Sylvan. No other changes were made to the settlement agreement.

CONDUCT FOLLOWING THE SETTLEMENT AGREEMENT

14. District continued to hold IEP team meetings for Student following the settlement agreement. District convened addendum IEP team meetings in March, April, and August 2014, and an annual IEP meeting in October and November 2014. Along with District staff, Student's father attended each meeting and was an active participant.

15. District convened Student's last annual IEP team meeting over two days, on October 6, 2014, and November 17, 2014. Student was 18 years old and in the 12th grade. In addition to other District staff, Mr. Janis and Andre Smith attended the IEP meeting. Mr. Smith was Student's special education case carrier and taught his Learning Strategies class. Father and Student each attended the meeting.

16. The IEP team first reviewed Student's progress towards his prior goals. Student had failed to meet any of his seven goals. Present levels of performance found that Student continued to have difficulty in reading, writing, math, vocabulary, self-expression, and career development. Even with substantial accommodations, Student struggled with basic academic concepts. Student had beginning eighth grade level skills in reading comprehension, and beginning sixth grade skills in mathematics. In writing, Student did not use periods or punctuation.

17. Similar to past meetings, Father was an active participant during the October and November 2014 IEP team meeting. Father shared his frustration that Student had not made anticipated progress in reading, writing, and math, and had poor independent living skills. Although Student was receiving passing grades in each class, Student's teachers agreed that Student's achievement was not commensurate with his

abilities. Student required additional academic support. Based upon this discussion, the IEP team reached a consensus to substantially increase the amount of specialized academic instruction provided Student; from two classes to six classes daily. As a result, Student was placed in a mild-to-moderate special day class for each class, other than an elective course.

18. Mr. Smith was familiar with Student, having taught his Learning Strategies class. The Learning Strategies class was a structured classroom similar to a resource specialist program class, where District provided Student specialized academic instruction. Student had difficulty with attention and task completion as a result of his disability. Student was far below his peers in reading and sometimes required instructions to be read aloud. Student was anxious and stressed at times. Mr. Smith agreed with the decision to remove Student from general education.

19. Despite his struggles, Student benefited from the Learning Strategies class. The class provided individual and small group instruction. Student could complete his classwork from other classes with that support and maintain passing grades.

20. Student also progressed socially, emotionally, and vocationally. Student was friendly, got along with his peers, had a girlfriend, and participated in District's job training program as part of his individualized transition plan. District arranged a job for Student at a local gym, where he worked during part of his senior year.

21. Pursuant to each of his IEP's, Student was placed on a regular high school diploma track. Special education pupils placed on the diploma track are required to graduate within the regular four years of high school, subject only to that pupil receiving failing grades and being required to retake a course. In comparison, special education pupils who are working towards a certificate of completion, rather than a regular high school diploma, are placed on an alternative track where they receive a modified curriculum. Those pupils are not required to graduate within the regular four years of

high school, and will continue to receive school services until they earn a certificate of completion or through their 22nd birthday, whichever comes first. Student's IEP did not call for an alternative curriculum and he was on course to graduate in the Spring 2015.

22. The October and November 2014 IEP team developed new goals for Student in the areas of employment development, independent living, public transportation, reading comprehension, math, written expression, and task completion. The IEP offered various accommodations that included testing in a small group, frequent breaks, extra time to complete assignments and homework, and the use of recording devices.

23. The IEP team adopted Father's request for additional services and offered Student specialized academic instruction for six classes per day, weekly counseling, and monthly college awareness training. Father consented to the IEP on Student's behalf and District implemented the IEP through the end of the 2014-2015 school year.

24. On May 28, 2015, after completing the regular four years of high school, Student had earned the requisite credits necessary to graduate. Having attained those class credits, an overall 3.33 grade point average, and a class ranking of 96 out of 758 students, Student received a regular high school diploma and graduated from Rancho Verde High School. Student was 19 years, six months of age.

FATHER'S REQUEST FOR ASSESSMENTS

25. Following the settlement agreement, Father requested that District provide Student additional assessments on several occasions. As Student's parent, Father was concerned that Student had not made sufficient academic progress. Student had continued to demonstrate academic difficulties following the settlement agreement. For example, in February 2014, which was the second semester of Student's junior year of high school, he took the California High School Exit Exam, with accommodations, and

failed both the English-language arts and math components of this standardized test.²

26. Student again took the CAHSEE, with accommodations, in November 2014, during the first semester of his senior year. Student again failed each part of the standardized test. District eventually waived the CAHSEE as a graduation requirement for Student.

27. Student continued to struggle in reading and basic math. Student had difficulty riding a public bus alone because he could not read the bus schedule. At work, Student struggled to make change. Father desired to have additional academic assessments to determine Student's present abilities; but he was unable to afford the testing on his own. For those reasons, Father requested that District provide Student additional testing.

28. On January 24, 2014, Father sent a letter to District requesting that it fund an independent educational evaluation in the area of academics for Student. Father repeated this request during an August 21, 2014 addendum IEP team meeting.

29. Whenever a parent makes a request related to the evaluation of a disabled child, the school district is required to write a prior written notice letter which lays out the school district's response to the request.

² The California High School Exit Exam (CAHSEE) was developed to determine proficiency as a requirement for a high school diploma. The CAHSEE was divided into two main sections: English-language arts and mathematics. The English-language arts section tested students at a 10th-grade level, and required a score of 60 percent to pass; the mathematics section tested students at an eighth-grade level, and required a score of 55 percent to pass. Normally, students were given the CAHSEE at the beginning of their sophomore year. The CAHSEE can be waived as a graduation requirement for pupils with an IEP.

30. On August 27, 2014, District sent parents a prior written notice letter. In the letter, District denied Parents' request for an independent educational evaluation on the basis that the settlement agreement had resolved "all claims to date, which included the District assessments completed to date and the right to request [independent educational evaluations] based on them." A parental request for an independent educational evaluation funded by a school district is a claim related to the school district's assessment. Student was last assessed by District on October 15, 2013, which predated the November 26, 2013 settlement agreement. Any claim related to the October 2013 assessment existed at the time the November 2013 settlement agreement was executed, and therefore had been waived as a term of the agreement.

31. On March 30, 2015, Parents, through their present attorneys, sent District a letter requesting that District assess Student. Parents requested that District perform "a comprehensive psycho-educational and transition assessment for [Student] to determine the appropriate services and supports for him as [Student] is not progressing in school." District was on spring break during the week of March 30, 2015, and received the letter on April 6, 2015. Student had been previously assessed by District, so the request was for District to reassess Student.

32. District did not agree to Student's parents' request for reassessment. On April 20, 2015, District timely sent Parents a prior written notice describing the grounds for its denial. District's based its refusal to assess upon (1) Student's October 2013 assessments being current, and; (2) the settlement agreement resolving all claims through June 30, 2015.

33. A school district must conduct a reassessment if the student's parents request a reassessment. District was therefore obligated to reassess Student based upon his parents' request. Circumstances also warranted reassessment. Since his last school assessment, Student had failed to make anticipated educational progress, failed to meet

IEP goals, failed to pass the CAHSEE, and required a more restrictive placement.

34. Additionally, District misunderstood the scope of the waiver in the November 2013 settlement agreement to include any future claims, through June 30, 2015, instead of just claims that existed when the agreement was ratified. Unlike Parents' request for independent educational evaluations, Parents' request for District to reassess Student did not relate to the October 15, 2013 school assessment, or any claims that existed when the settlement agreement was executed, as the request related to Student's present levels. Consequently, District's refusal to reassess Student was not based upon proper grounds.

35. However, because of the timelines necessary to complete a reassessment, the testing, and the IEP team meeting to review the reassessment, would have occurred after Student had graduated.

36. Reassessment requires parental consent to a proposed assessment plan. Upon referral for an assessment, the school district has 15 days to develop the proposed assessment plan, not counting calendar days between the pupil's regular school sessions or calendar days of school vacation in excess of five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. The school district must give the parents and/or pupil 15 days to review, sign and return the proposed assessment plan. An IEP meeting to review the results of an assessment must be held within 60 days, not counting days between a pupil's regular school sessions, terms, or days of vacation in excess of five school days, from the receipt of the parent's written consent to the assessment, unless the parent agrees in writing to an extension.

37. Here, District received Student's parents' request for assessment on April 6, 2015. Had it accepted the referral for assessment, District would have had 15 days, April 21, 2015, to provide Parents a proposed assessment plan. If Parents had waived

their 15 days to review the assessment plan and immediately returned the signed plan, District would have had 60 days, to June 20, 2015, or later because of the summer recess, to complete the reassessment and hold an IEP team meeting to review the testing results. Yet, Student graduated with a regular high school diploma on May 28, 2015.

38. A school district has no obligation to continue an educational program for a student with a disability who has met state-established criteria for a regular high school diploma. Student's complaint did not allege that he was unlawfully graduated, and District was relieved of its obligation to provide Student a FAPE following his graduation. District therefore had no obligation to complete the reassessment, hold an IEP team meeting, or to determine appropriate services and supports for Student, the stated purpose for the reassessment, after May 28, 2015. As a result, District was not required to reassess Student.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁴ et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special

³ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁴ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a))

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer Island*) [In enacting the IDEA,

Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student had the burden of proof on all issues.

REGULAR DIPLOMA

5. A pupil who is identified by an IEP as a child with a disability who requires special education and related services to receive a FAPE remains eligible after the age of 18, provided the pupil was enrolled in or eligible for the services prior to his 19th birthday, and has not yet completed the prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).) Under California law, a disabled pupil who has not completed the prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma is eligible to receive special education service through the age of 22. (Ed. Code, § 56026, subd. (c)(4)(A).)

6. A regular high school diploma must be fully aligned with the state's academic standards. (34 C.F.R. § 300.102(a)(3)(iv).) A pupil with exceptional needs who has met all state and school district requirements and graduates from high school with a regular diploma is no longer eligible for special education and related services. (Ed. Code, § 56026.1, subd. (a).) The IDEA relieves a school district of the obligation to provide FAPE to students who graduate with a regular high school diploma. (34 C.F.R. § 300.102(a)(3)(i).)

7. The state requires that a student complete the curriculum, and have sufficient passing credits in each required area of study. In California, when an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of study designated in the student's IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) A procedural violation occurs if the public agency awards the student a diploma when the pupil has not completed a prescribed course of study as designated in the student's IEP. Here, there is no question that Student had met the prescribed course of study designated in his IEP's, thereby meeting the state and school district requirements necessary to be awarded a regular diploma and to graduate from high school. Therefore, Student was no longer eligible for special education and related services upon his receipt of a regular high school diploma on May 28, 2015.

ASSESSMENT AND REASSESSMENT STANDARDS

8. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) By this standard, the assessments requested in this case are reevaluations of Student.

9. In conducting a reassessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor(s). (20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320.)

10. Reassessment requires parental consent to a proposed assessment plan. Upon referral for an assessment, the school district has 15 days to develop the proposed assessment plan, not counting calendar days between the pupil's regular school sessions or calendar days of school vacation in excess of five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code 56043(a).) The school district must give the parents and/or pupil 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

11. An IEP meeting to review the results of an assessment must be held within 60 days, not counting days between a pupil's regular school sessions, terms, or days of vacation in excess of five school days, from the receipt of the parent's written consent to the assessment, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (f)(1).)

DISTRICT'S DENIAL OF PARENTS' REQUEST FOR REASSESSMENT

12. Student complains that he was denied a FAPE when District denied his parents' request for reassessment.

13. A school district must conduct a reassessment if it "determines that the educational or related service needs of the child, including improved academic achievement and functional performance, of the child warrant a reevaluation," or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a)(1).) By this standard, District was obligated to reassess Student based upon his parents' request for reassessment.

14. District erroneously argued that it was not required to reassess Student because the settlement agreement waived all claims through June 30, 2015, and

because circumstances did not warrant reassessment.

15. District improperly relied upon the settlement agreement to deny the reassessment request. District misunderstood the scope of the waiver in the November 26, 2013 settlement agreement, to include any future claims, through June 30, 2015, instead of just claims that existed when the agreement was ratified. Parents' request for District to reassess Student did not relate to the October 15, 2013 school assessment, or any claims that existed when the settlement agreement was executed.

16. Additionally, Student's educational and related services needs changed substantially since he was last assessed, warranting reevaluation. For instance, during the October and November 2014 IEP team meeting, the team expressed concern that Student had serious academic delays and had not made anticipated progress. He had not met any of his prior annual goals, and was far below his peers in reading, writing, and math. Student was frequently off task, inattentive, and required assistance to understand simple instructions. He was unable to pass the CAHSEE, even with accommodations. As a result of his lack of progress, Student was removed from general education and placed into a mild to moderate special day classes for each course, with the exception of an elective course. This was a significant change of placement and services since he was last assessed, in October 2013.

17. For those reasons and due to Parents' request for reassessment, District's refusal to reassess was a procedural violation.

18. District's failure to reassess Student constitutes a procedural violation of the IDEA. (*R.B., ex rel. F.B.v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 940.) A procedural violation of the IDEA constitutes a denial of a FAPE "only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the IEP decision making process; or (3) caused a deprivation of educational benefits." (20 U.S.C. § 1415(f)(3)(E)(ii);

W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, Missoula, Mont. (9th Cir. 1992) 960 F.2d 1479, 1484 .)

19. Here, it is not possible to find that District's failure to reassess constituted a lost educational opportunity or impeded Student's right to a FAPE, simply because Student had lawfully graduated prior to the time the reassessment would have been completed.

20. District received Student's parents' request for assessment on April 6, 2015. Had they accepted the referral for assessment, District would have had until April 21, 2015, to provide Parents a proposed assessment plan. If Parents had immediately returned the signed plan, District would have had until June 20, 2015, or later due to the summer recess, to complete the reassessment and to hold an IEP team meeting to review the testing results. Yet, District's obligation to provide Student a FAPE terminated on May 28, 2015, when he received a regular high school diploma.

21. Student did not allege that he was unlawfully graduated, and no evidence was provided which supported that finding. Consequently, District was relieved of its duty to provide Student a FAPE following his receipt of a regular high school diploma. (34 C.F.R. § 300.102(a)(3)(i).) Consequently, District had no obligation to perform the reassessments, or to revise Student's special education services, the stated purpose for the reassessment request.

22. For those same reasons, it is not possible to find that District's failure to reassess Student resulted in a significant deprivation in his parent's opportunity to participate in the IEP decision making process. Because District was not obligated to convene an IEP team meeting following his graduation, there was no IEP meeting in which Parents' could have had their rights deprived.

23. For the foregoing reasons, Student failed to meet his burden to show that District's failure to reassess resulted in a denial of FAPE.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: District prevailed on the sole issue heard and decided.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56506, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: October 22, 2015

/s/

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings